

LAW SUMMARY

STATUTE OF LIMITATIONS – ASSESSMENTS

The law provides final deadlines for the Franchise Tax Board (FTB) to assess additional taxes, or to propose assessments. This time limit is known as the statute of limitations.

The general time limit for FTB to assess additional California state income and franchise taxes is provided by section 19057 of the Revenue and Taxation Code (renumbered from sections 18586 and 25663 of the Revenue and Taxation Code, effective January 1, 1994).

Assessments may be allowed after the general time limit in special circumstances, such as if the Internal Revenue Service made federal adjustments, or if the taxpayer failed to report 25% or more of the gross income required to be reported on a tax return.

1. Returns Filed on or Before the Original Due Date of the Return

The law generally requires FTB to mail a proposed deficiency assessment to the taxpayer within four years after the filing date of the taxpayer's return. Returns filed before the original due date of a personal income tax return (April 15 of the year after the tax year) are considered as filed on the original due date (Revenue and Taxation Code Section 19066.)

For example, the original due date of a return for the 1992 tax year was April 15, 1993. If the taxpayer filed a return before this deadline, the return is considered as filed on April 15, 1993. The statute of limitations for FTB to assess tax for this tax year would therefore expire on April 15, 1997.

2. Returns Filed After the Original Due Date of the Return or on Extension, or Delinquent Returns

Depending on the tax year involved, the deadline may be computed from either the tax return's April 15 due date, October 15 extended due date, or the date a late tax return was filed, as follows:

a. For the 1990 and prior tax years, the final due date for FTB to assess additional tax was four years from the original April 15 due date of the return. If the taxpayer received an extension of time to file the return, the final due date to assess tax was four years

from the October 15 extended due date of the return. If an extension to file the return was not granted, and the taxpayer filed the return after April 15 but before October 15, FTB had four years from the date the late return was filed to assess tax. If an extension was granted, but the taxpayer did not file the return on or before October 15, FTB had four years from the date the late return was filed to assess tax.

b. For personal income taxpayers, the process of automatic "paperless" extensions began in the 1991 tax year and remains in effect. Under this process, the taxpayer is no longer required to request an extension on a paper form. If the taxpayer files a return on or before October 15, an extension is automatically granted. If the taxpayer fails to file a return by October 15, no extension exists. Under the paperless extension process, the return is timely if it is filed on or before October 15.

(1) For the 1991 tax year only, if the taxpayer filed a return on or before April 15, 1992, FTB had until April 15, 1996 to assess tax. If the taxpayer filed a return after April 15, 1992 and on or before October 15, 1992, FTB had until October 15, 1996 to assess tax. If the taxpayer did not file the return by October 15, 1992, FTB had four years from the date the late return was filed to assess tax.

(2) The law changed for the 1992 tax years and after. Whether or not the taxpayer qualified for an automatic paperless extension does not affect the final deadline. That is, FTB must assess tax within four years from April 15, the original due date of the return. If the taxpayer did not file the return on or before April 15, however, FTB has four years from the date the return was filed to assess tax. This is true even if the return was filed before October 15.

3. Taxpayer Did Not File a Return or Taxpayer Files a False or Fraudulent Return

If the taxpayer did not file a tax return, or files a false or fraudulent tax return, there is no time limit for FTB to assess tax. FTB will estimate net income from any available information and assess tax based on that estimate. (Revenue and Taxation Code section 19087; *Appeal of Arthur H. Hesbon*, 81-SBE-154, November 16, 1981.)

Even if the taxpayer asserts that the tax return was mailed, the taxpayer must provide convincing evidence, such as a certified mail receipt, of mailing the return to overcome FTB's records indicating that no return was filed. (*Appeal of La Salle Hotel Co.*, 66-SBE-071, November 23, 1966; *Appeal of Richard L. and Mary D. Marks*, 76-SBE-057, May 4, 1976; see also Government Code section 11003, Internal Revenue Code section 7502, and Treas. Reg. section 302.7502-1(c)(1)(iii)(A).)

4. Mailing of the Assessment

An assessment is timely if it is mailed to the taxpayer's last-known address before the applicable time limit. As a general rule, a taxpayer's last-known address is the address that appears on the taxpayer's most recently filed return, unless FTB is given clear and concise notice of a different address. (*Taylor v. Commissioner*, (1990) T.C. Memo. 1990-559; *King v. Commissioner* (9th Cir. 1988) 857 F.2d 676; *Appeal of W. L. Bryant*, 83-SBE-180, August 17, 1983.)

5. Joint Assessments

Whenever a husband and wife file a joint return, the liability of each spouse is joint and several. This means that FTB can assess the entire tax liability against either spouse. (Revenue and Taxation Code section 19006; *Appeal of Bennie A. Jefferson*, 79-SBE-104, June 28, 1979.)

6. Notice of Action

The purpose of the statute of limitations is to specify the time within which FTB must initiate its assessment procedure. There are no limitations requiring that the assessment process be completed within any specific time period. Therefore, there are no time limitations applicable to FTB's notice of action, which is used to finalize the assessment. (*Appeal of Jenkel-Davidson Optical Company*, 81-SBE-101, May 19, 1981; *Appeal of Peter I. and Inga M. Kune*, 84-SBE-106, June 27, 1984.)

7. Multiple Reviews

FTB is not limited to one review of a taxpayer's liability. FTB may issue more than one deficiency assessment before the statute of limitations expires. This is true even if prior deficiency assessments have been paid. (*Appeal of James T. and Janice Sennett*, 77-SBE-125, September 28, 1977.)

8. Taxpayer's Burden of Proof

FTB's determination is presumed correct and the taxpayer bears the burden of showing error in such determination. (*Appeal of Diane Cookston*, 82-SBE-264, November 17, 1982.) In order to carry that burden, the taxpayer must point to an applicable statute and show by credible evidence that he/she comes within its terms. (*Appeal of Robert R. Telles*, 86-SBE-061, March 4, 1986.)

9. Interest

The law requires mandatory interest to be charged on a deficiency of tax. Interest must be computed from the time the tax was due until the date the tax was paid. Interest is computed daily on the balance due of tax, penalty (if applicable), and interest, until the date the entire liability is completely paid.

Interest is not a penalty imposed on a taxpayer; it is merely compensation for the use of money. (Revenue and Taxation Code sections 19104 and 19521; *Appeal of Richard E. and Geraldine Goodman*, 84-SBE-145, October 10, 1984.)